

October 25, 2005

Mr. Sam Leto
Fiscal Services Division
Legislative Services Agency
Ola Babcock Miller Building
Des Moines, IA 50319

Mr. Leto:

Thank you for this opportunity to provide input to the Government Oversight Committee on the adoption of the ABA's Model Procurement Code (MPC).

As you know, Section 1-104 of the MPC contains four options regarding the application of the MPC to political subdivisions:

- 1)only apply the MPC to state expenditures and exclude political subdivisions;
- 2)apply the MPC in its entirety to political subdivisions;
- 3)apply certain portions of the MPC to political subdivisions; and
- 4)allow political subdivisions the option to adopt part or all of the MPC.

We take no position on whether the Legislature should adopt the MPC. But if it chooses to do so, for reasons explained below, counties should be excluded from the MPC. ISAC favors options 1 or 4 in Section 1-104, and opposes options 2 and 3.

Before addressing the particular problems with the MPC, it is necessary to put the MPC in historical context. According to information supplied by the ABA, just 17 states have adopted the MPC. And only one, Pennsylvania, has adopted it since 1994. Here is the breakdown:

After 1994:	1 (Pennsylvania, 1998)
1990 - 1994:	1 (Hawaii)
1980 - 1990:	13
Pre - 1980:	2

So the MPC is not a new idea. It had its heyday in the 1980s. It is very curious that it would be dusted off and brought up now.

Of the 17 states that have adopted the MPC, only five states have chosen to apply the MPC to local governments. So at the outset, it is fair to ask why Iowa would want to head down a path rejected in 45 other states.

Here are the arguments against applying the MPC to counties:

1)Unwieldy

The MPC is 85 pages long. It is dense, extremely detailed, and very proscriptive. It is clearly written for larger governmental entities like states and major metropolitan cities - entities that have bigger budgets, bigger procurement staffs, and bigger problems.

For instance, the MPC contains provisions for the creation of a “procurement policy office” and a policy-making board separate from day-to-day county operations, headed by a chief procurement officer.

There is no way that this approach makes sense for counties like Butler County. Butler County, which is 576 square miles, is only able to afford one deputy patrolling the county on some nights. They need a second road deputy a lot more than they need a “procurement policy office” and a chief procurement officer.

2)Includes Services

According to 3-201 of the MPC, counties would apparently be required to use a competitive bid process for professional services, which has never been required by Iowa law.

This is a remarkably bad idea. For instance, if a county wants to hire a labor negotiator, a public relations firm or outside legal counsel, the MPC would apparently require the use of a competitive bidding process. But hiring outside consultants is not like buying a washing machine. Hiring the right consultant has a lot to do with intangibles like integrity, communication style and personal philosophy. Awarding a professional services contract to the lowest bidder is usually asking for trouble.

3)County Purchases Already Regulated

Iowa counties are already regulated when it comes to the most expensive purchases they make. For instance:

- All contracts for building or improvement projects exceeding \$50,000 must be competitively bid. Iowa Code section 331.304;
- All contracts for road and bridge construction exceeding \$50,000 must be advertised and let at a public letting. Iowa Code section 309.40; and
- All road and bridge contracts of \$50,000 or less must either be let at a public letting or let through informal bid procedure by contacting at least three qualified bidders. Iowa Code section 309.41.

In addition, Iowa Code section 331.342 prohibits county officials from engaging in self-dealing or benefiting from county contracts. Also, Chapter 68B, the gift law, prohibits county officials from accepting gifts from those that do business with the county.

Some counties, such as Polk County, have even added their own purchasing policies on top of the state requirements.

And if the goal is smarter purchasing, many counties are already involved in joint purchasing agreements, including the National Association of Counties' U.S Communities nationwide purchasing program. For more information, go to <http://www.uscommunities.org/>

4)No Record of Problems

In most instances where the MPC has been adopted, it has been in response to widespread allegations of improper or illegal conduct by government officials. But we are not facing anything like that in Iowa. There are always going to be isolated examples of misconduct. But they are few and far between. And frankly, if someone is determined to engage in wrongdoing, it is going to occur whether there is a MPC in place or not.

5)MPC Would Hurt Local Merchants

If all county purchasing turns into a question of who can deliver the goods cheapest, there is no way that small, local vendors will be able to compete for county business. Large regional or national companies will always be able to beat local merchants on price. But if implementing competitive bidding takes business away from local merchants, and those local merchants have to close, county residents will be the big losers.

6)Competitive Bidding Not a Panacea

When price becomes the sole determining factor in winning contracts, vendors search for ways to cut costs and cut corners. When low-ball bidders provide substandard products to the counties, and counties have to resort to remedial measures, competitive bidding sometimes ends up costing counties more money. Competitive bidding sometimes fosters a race to the bottom. There is truth to the old saying: "You get what you pay for."

Thank you for allowing me to submit these comments. If you would like anything further, please contact me.

Sincerely,

David Vestal
General Counsel